

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 19th day of September, 2018, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the Department of Finance (hereinafter referred to as "Government") and Northwoods Consulting Partners, Inc. (hereinafter referred to as "Contractor").

Both parties witness to being duly authorized to execute this agreement and will attest accordingly when and where necessary.

WITNESSETH:

WHEREAS, the Government desires to convert its business operational processes and paper-file system for the Government Insurance Fund to an Electronic Document Management Solution ("EDMS") automated system, with record management capabilities described in Addendum I (Statement of Work) attached hereto; and

WHEREAS, the Government Insurance Fund, Office of the Custodian seeks to automate the experience rating calculations and workman's compensation insurance premium filing process for employers within the U.S. Virgin Islands;

WHEREAS, the electronic/automated system must be compatible and work seamlessly with the Government's current financial management system, the Enterprise Resource Planning system ("ERP");

WHEREAS, the Contractor was successfully selected pursuant to proposal submitted to the Government in accordance to Title 31 Virgin Islands Code Section 239 (a)(4); and

WHEREAS, the Government is satisfied that the Contractor's response sufficiently meets the Government's needs; and

WHEREAS, the Government and Contractor agree to incorporate the submitted Contractor's Proposal into, and make part of, this Agreement provided in Addendum III, attached hereto; and

WHEREAS, the Contractor represents that it is willing and capable of providing such services;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. SERVICES

The Contractor will provide services described in Addendum I, attached hereto and incorporated herein and described and referred to as "Statement of Work".

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2. TERM

This Contract shall commence upon its execution by the Governor of the U.S. Virgin Islands ("Governor") and shall terminate one (1) year, thereafter. The Contractor is authorized to proceed with the work described in this contract from the date that the contract is executed by the Governor. The Government may, at its sole option, extend the Contract for a period of one (1) year for maintenance service at the rate stipulated in Addendum II, Terms of Compensation

3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Statement of Work), agrees to pay Contractor the sum of One Hundred Thirty-Two Thousand Thirty and 00/100 Dollars (\$132,030.00) in accordance with the provisions of Addendum II, Terms of Compensation, to this Contract.

4. TRAVEL OR TRANSPORTATION EXPENSES

Inclusive of the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed N/A (\$ N/A).

5. RECORDS

The Contractor when applicable, will present documented precise records of time and/or money expended under this Contract.

6. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

7. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

8. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government.

9. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected to the performance by

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Contractor under this Contract and arising from any cause, except the sole negligence of Government.

10. INDEPENDENT CONTRACTOR

Contractor and its agents and employees are independent contractors performing professional services for the Government and are not agents, representatives, or employees of the Government. Because of this, the Government is under no obligation to make withholdings in relation to Contractor employees. Contractor and its agents and employees shall not accrue vacation or sick leave, retirement, insurance, bonding, use of Government's vehicles, or any other benefits afforded to employees of the Government as a result of this Contract, except as derived from their employment by Contractor and/ or its subcontractors and agents.

11. GOVERNING LAW

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

12. OPERABILITY GUARANTEE

In accordance with Addendum I, Statement of Work, the Government and Contractor agree that the implementation and conversion of Government's business processes from a paper-based system to an electronic, automated system with records management capabilities is a primary objective of this Contract. Therefore, the Government and Contractor agree that the Contractor will provide, within one hundred twenty (120) business days, all information, data, forms, technical modification, documentation, consultation, and training needed to support the Government in operating the software.

13. APPROVALS NOT CONSTRUED AS WAIVERS

The Government's review, approval, acceptance of, and payment of fees for services required under this Contract, shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of Contractor's failure to perform. Contractor is and will remain liable to the Government as a result of Contractor's gross negligence or willful misconduct in performance of any of the services performed under this Contract.

14. WARRANTY

14.1 Nature and Extent of Warranty

For a period of sixty (60) days from the date of acceptance of the Design Phase of the Project, Contractor shall use its best efforts to promptly correct, at no additional cost to Government, any error arising solely out of the work performed by Contractor which causes material deviations in the software or inoperability of the hardware relating to the electronic system. Should such errors cause the loss of Government records, Contractor shall, to the extent reasonably possible, reconstruct any files affected by the error identified and reported to Contractor within thirty (30) days after notification by the Government of the error that arose out of the performance of the services. The Government acknowledges its obligation to maintain adequate backup copies of all data files. The Contractor shall, in addition to correcting errors arising solely out of work performed by its staff, notify the Government of such errors.

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14.2 Voidance of Warranty

The warranty given by Contractor hereunder shall become void and unenforceable against Contractor if the Government, within the warranty period, allows a party other than Contractor to make changes to the electronic system or causes modifications to the application and supporting software covered in this Contract after being advised by Contractor that such modifications may cause errors or material deviations in the operational capabilities of the hardware or software, but only with respect to the component or components affected by such modification.

14.3 Limitation of Warranty

Except for the warranties expressly set forth in this contract, Contractor makes no other warranties, and expressly disclaims all other warranties, whether written, oral or implied, including without limitation any other warranty with respect to the quality, accuracy or freedom from error of the operation, use and/or function of the services, software or products.

15. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

16. ENTIRE AGREEMENT

This agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

17. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable, in the event that such contest is not successful.

18. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

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19. CONFLICT OF INTEREST

(a) Contractor covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

(b) Contractor further covenants that it is:

(1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or

(2) a territorial officer or employee and, as such, has:

- (i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
- (ii) not made, negotiated or influenced this Contract, in its official capacity;
- (iii) no financial interest in the Contract as that term is defined in section 1101(1) of said Code chapter.

20. TERMINATION

Either party will have the right to terminate this Contract with or without cause on Thirty (30) days written notice to the other party specifying the date of termination.

21. PARTIAL TERMINATION

The performance of work under this Contract may be terminated by the Government, in part, whenever the Government shall deem such termination advisable. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the thirty (30) day notice.

22. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

23. EFFECTIVE DATE

The effective date of this Contract shall be the day of execution of the Contract by the Governor.

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24. NOTICE

Any notice required or permissible under the terms of this Contract shall be deemed sufficient if given in writing and sent by certified mail, with return receipt requested, or personally delivered, addressed to the parties as follows:

GOVERNMENT

Lloyd T. Bough, Jr.
Commissioner
Department of Property and Procurement
3274 Estate Richmond
St. Croix, VI 00820

Valdamier O. Collens
Commissioner
Department of Finance
2314 Kronprindsens Gade
St. Thomas, V.I. 00802

CONTRACTOR

Northwoods Consulting Partners, Inc.
Gary Heinze
President/CEO
5815 Wall Street
Dublin, Ohio 43017

25. LICENSURE

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

26. OTHER PROVISIONS

Addenda I, II, and III attached hereto are a part of this Contract and are incorporated herein by reference.

27. DEBARMENT CERTIFICATION

By execution of this contract, the contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract, and that the Contractor or

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subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

28. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

29. OWNERSHIP OF DOCUMENTS AND INFORMATION

The Government shall have unlimited rights to use, disclose, duplicate, and/ or publish for any purpose all information and data developed, derived, documented and delivered by the Contractor under this Contract, and shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all operational and application software developed and delivered under this Contract, subject to existing copyrights of the Contractor and to the terms and conditions of this Contract.

All technical communications and records originated or prepared by Contractor pursuant to this Contract intended as the expression of Contractor's findings, analyses, conclusions, opinions and recommendations with respect to the subject matter of this Contract, including papers, reports, charts and other documentation, application software developed and/ or transferred in this project, including modifications, enhancements and/ or alternatives, but not including Contractor's administrative communications, records files and working papers relating to this Contract (all of the foregoing, collectively, the "Work Product") shall be the sole and exclusive property of the Government, free of any claim or retention of rights by the Contractor.

Any additional or advanced operations software concepts and/ or technologies that may be developed during the term of the Contract and incorporated into the Contractor's licensed products shall be and shall remain the exclusive property of the Contractor. However, the Contractor shall provide such additional or advanced concepts and/ or technologies at no additional cost and with no restrictions other than those contained in this Contract.

The Government retains all ownership or licensed rights to the system as modified and enhanced under this Contract, including but not limited to, ownership and licenses for any and all application software of the project, operational codes, and plans. The Contractor shall make available to the Government at any time the most current versions of all program source code of each application program modified and/ or enhanced under this Contract, data dictionary and all relevant documentation on computer readable media, and shall provide interim copies upon request of Government. Concurrent with the final delivery of the software, the Contractor shall provide the Government with at least one (1) copy of the source code, in computer readable media, for the relevant portion of each application program modified and/ or enhanced under this Contractor. If the Contractor uses or purchases any software or structured methodology product as part of this and/ or for use in this project, e.g., to develop, document, modify, test, compile or otherwise assist in the project, the software product becomes the property of the Government at the completion of the project without cost.

The Government retains all ownership rights and warranties to all computer hardware and/ or equipment purchased and installed by the Contractor on behalf of the Government for the operation or maintenance of the software of this project.

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Excepted from the provisions of this Section are all programs and documentation, which is licensed material acquired by Contractor and/ or its subcontractors in connection with this Contract.

Notwithstanding anything to the contrary herein, Contractor shall have the right to use and employ its general skills, knowledge, and expertise, and to use, disclose and employ any generalized ideas, concepts, knowledge, methods, techniques, or skills gained or learned during the course of performing the Services hereunder.

30. SOFTWARE LICENSES

The software proposed by Contractor and accepted by Government are governed by the applicable end user license agreement(s) ("EULA") and software support agreement(s).

(1) In the event Contractor is required, in the services to be provided hereunder, to modify or use any third party software licensed to and provided by the Government, the Government represents and warrants that it has acquired the necessary approvals and license rights for such modification or use by Contractor.

(2) The Contractor shall grant to the Government a non-transferable and nonexclusive license to use software product(s) owned by the Contractor, as specified in their proposal, and shall provide technical services for the software product(s), during the term of this Contract, within the compensation provided for this Contract, and in accordance with the following terms and conditions:

(3) The software product(s) shall be used solely in the conduct of the Government's business, and on and for the hardware and central processing units (CPUs) installed for the uses, and at the locations, specified for this project.

(4) Use of the aforementioned software product(s) upon other or upgraded CPU(s), by other parties, or at other locations, requires additional license(s) and fee(s). The Government shall notify the Contractor at least thirty (30) days prior to any such proposed change external distribution or to process data on behalf of others, without mutual agreement between Government and Contractor.

(5) The Government may move the software product(s) to another location to overcome interruption to its business as a result of hardware failures or any unforeseen technology failure. If the designated CPU(s) becomes inoperative, whether temporarily or permanently, the license may be extended to another CPU(s) for as long as is needed to remain operational.

(6) The Government may not assign, sublicense, sell, encumber, or otherwise attempt to transfer this license to any other entity, unless approved in writing by the Contractor.

(7) The Contractor shall provide the Government with the software product(s) on magnetic media along with associated electronic documentation, and shall install the product(s) at the Government's location(s) in accordance with the proposal.

(8) The Contractor shall provide, during the term of this Contract, the following technical services:

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(c) System - Modifications - periodic consolidations of fixes to known errors of the software product(s); and

(d) Documentation - updates of the product(s) documentation.

31. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

32. ORDER OF PRECEDENCE

In the event of a conflict arises between the information contained in Addendum I and Addendum III, the information in Addendum I will take precedence.

In addition, the Contractor agrees to make reasonable efforts to correct any product system errors arising in a current version of the product(s) during the term of this Contract.

At the conclusion of this Contract, the above licenses and services may be extended and/or amended upon mutual written agreement of both parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

Valdamier O. Collens, Commissioner
Department of Finance

9.4.2018
Date

Lloyd T. Bough, Jr., Commissioner
Department of Property and Procurement

9/24/18
Date

CONTRACTOR

Gary Heinze, President/CEO
Northwoods Consulting Partners, Inc.

8/29/2018
Date

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APPROVED:

K. Mapp

Date: 09-19-18

Kenneth E. Mapp

GOVERNOR OF THE VIRGIN ISLANDS

APPROVED AS TO LEGAL SUFFICIENCY:

DEPARTMENT OF JUSTICE BY: Carol McDonald, Esq. Date 9/14/18
AAG

PURCHASE ORDER NO.

CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of Contract
No. _____ entered into between the
Department of Property and Procurement on behalf of the
Department of Finance and Northwoods Consulting Partners,
Inc.

Lloyd T. Bough, Jr., Commissioner

Department of Property and Procurement

REC'D PROPERTY & PROCUR
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